

House Bill 455 (AS PASSED HOUSE AND SENATE)

By: Representatives Murphy of the 23rd, Rice of the 51st, Parham of the 141st, Powell of the 29th, and Dollar of the 45th

A BILL TO BE ENTITLED
AN ACT

To amend provisions of the Official Code of Georgia Annotated, relating to new and used motor vehicle dealers; to amend Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and licensing of motor vehicles, so as to provide for use of the vehicle identification number on temporary license plates; to provide that all temporary plates shall be required to have a holographic security image and a write-resistant overlay; to require all sellers and distributors of holographic strips to register with the department; to provide for dealer's plates; to provide for the replacement of lost or stolen plates; to provide for temporary site permits for new motor vehicle dealers; to provide for civil, administrative, and criminal penalties; to repeal and reserve Code Section 40-2-153, relating to registration and licensing of makers and dealers of motor vehicles; to amend Chapter 47 of Title 43 of the Official Code of Georgia Annotated, relating to used motor vehicle and used motor vehicle parts dealers, so as to change the definition of "temporary site"; to provide for temporary site permits for used motor vehicle dealers; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and licensing of motor vehicles, is amended by striking subparagraph (b)(2)(B) and paragraph (3) of subsection (b) of Code Section 40-2-8, relating to operation of an unregistered vehicle or vehicle without a current license plate, and inserting in their respective places the following:

"(B)(i) Any dealer of new or used motor vehicles shall issue to the purchaser of a vehicle at the time of sale thereof, unless at such time the purchaser makes application to transfer to such vehicle in accordance with this chapter a valid license plate issued to him or her or unless such vehicle is to be registered under the International Registration Plan, a temporary plate which may bear the dealer's name and location

1 and shall bear, in characters not less than one-quarter of an inch wide and one and
2 one-half inches high, the expiration date of the period within which the purchaser is
3 required by Code Section 40-2-20 to register such vehicle. Such temporary plates
4 shall be made of heavy stock paper, inscribed with indelible ink, and designed to
5 resist deterioration or fading due to exposure to the elements during the period for
6 which display is required. The expiration date, may the vehicle identification number,
7 and the year, make, and model of the vehicle shall be handprinted on the plate at the
8 time of issuance by use of an indelible ink marker, with contrasting ink, provided that
9 the month of expiration shall be indicated by complete word or by three-letter
10 abbreviation thereof. The expiration date of such a temporary plate may be revised
11 and extended by the county tag agent only if an extension of the purchaser's initial
12 registration period has been granted as provided by Code Section 40-2-20. Such
13 temporary plate shall not resemble a license plate issued by this state and shall be
14 issued without charge or fee therefor. Such temporary plate shall be surrendered to the
15 tag agent at the time the vehicle is registered, and the tag agent shall destroy such
16 temporary plate. The requirements of this subparagraph do not apply to a dealer
17 whose primary business is the sale of salvage motor vehicles and other vehicles on
18 which total loss claims have been paid by insurers.

19 (ii) All temporary plates issued by dealers to purchasers of vehicles ~~on or after~~
20 ~~January 1, 2001,~~ shall be of a standard design prescribed by regulation promulgated
21 by the Department of Motor Vehicle Safety in accordance with the requirements of
22 this subparagraph. ~~Temporary plates issued by dealers to purchasers prior to such date~~
23 ~~may be of any design if such plates meet the requirements of this subparagraph~~ All
24 temporary plates shall be required to have a holographic security image and a
25 write-resistant overlay with security features such that any attempt to change or
26 modify the expiration date on the temporary plate will show immediate signs of
27 tampering. All holographic security images required under this division and
28 manufactured on or after July 1, 2005, shall be numbered with a separate and distinct
29 number at the point of manufacture. All holographic security images affixed to
30 temporary plates on or after January 1, 2006, shall be numbered as required by this
31 division.

32 (3) All sellers and distributors of holographic strips must register with the department
33 and shall be assigned a distinct identifier by the department. Such identifier shall precede
34 the numbers required under division (b)(2)(B)(ii) of this Code section. All sellers and
35 distributors of holographic security images must maintain an inventory record of
36 holographic security images by number and purchaser.

(3)(4) The purchaser and operator of a vehicle shall not be subject to the penalties set forth in this Code section during the period allowed for the registration. If the owner of such vehicle presents evidence that such owner has properly applied for the registration of such vehicle, but that the license plate or revalidation decal has not been delivered to such owner, then the owner shall not be subject to the above penalties."

SECTION 2.

Said chapter is further amended by striking Code Section 40-2-38, relating to registration and licensing of dealers and manufacturers of motor vehicles, and inserting in its place the following:

"40-2-38.

(a) Manufacturers, distributors, and dealers engaged in the manufacture, sale, or leasing of vehicles required to be registered under Code Section 40-2-20 shall register with the commissioner, making application for a distinguishing dealer's number, specifying the name and make of motor vehicle, tractor, or trailer manufactured, sold, or leased by them, upon forms prepared by the commissioner for such purposes, and pay therefor a fee of \$62.00, which shall accompany such application. Upon payment of such fee by a dealer, the commissioner shall furnish to the dealer one master number plate to expire December 31 of ~~odd-numbered years~~ each year, to be known as a dealer's number; and to be distinguished from the number plates provided for in this chapter by a different and distinguishing ~~color~~ colors to be determined by the commissioner, ~~with the word 'Dealer' on same; a.~~ The dealer plate for a franchise motor vehicle dealer shall be distinguishable from the dealer plate for a used car dealer. A dealer's number plate to be is for the purpose of demonstrating or transporting dealer's vehicles or trailers for sale or lease. Persons engaged in the business of transporting vehicles for a dealer under a vehicle's own power shall be permitted to use such dealer's plate for the purpose of transporting a vehicle.

(1) No dealer may use or permit to be used a dealer's number for private use or on cars for hire, for lease, or other manner not provided for in this Code section. A dealer may use or permit to be used a dealer's number for private use on vehicles owned by the dealership, regardless of whether such vehicle has been issued a certificate of title or registered, when such vehicles are operated by an employee or corporate officer of the dealer which has been issued such number. A distinguishing dealer's number used by an employee or officer for private use shall authorize such person to operate the vehicle to which the number is attached on the public highways and streets. A dealer may apply for one or more distinguishing dealer's numbers. For purposes of this paragraph, 'employee' means a person who works a minimum of 36 hours per week at the dealership.

(2) The manufacturer's or distributor's license plate is limited to no longer than six months' use per vehicle. Upon payment of such a fee by a manufacturer or distributor, the commissioner shall issue to manufacturers and distributors number plates with the word 'Manufacturer' or 'Distributor' on such plates. Nothing in this subsection shall preclude a manufacturer or distributor from using a 'Manufacturer' or 'Distributor' number plate on motor vehicles it owns when such vehicles are used for evaluation or demonstration purposes, notwithstanding incidental personal use by a manufacturer or distributor. A dealer may apply for one or more distinguishing dealer's numbers. In the event the dealers, distributors, or manufacturers desire more than one tag, they shall so state on the application, and, in addition to the fee of \$62.00 provided in this Code section, shall pay \$12.00 for each and every additional number plate furnished. ~~Persons engaged in the business of transporting vehicles for others under such vehicle's own power shall likewise be entitled to obtain license plates under this Code section, but such plates shall be used only on vehicles being transported.~~

(b) Dealer plates shall be issued in the following manner:

(1) Dealers shall be issued a master plate and two additional plates, for a total of three initial plates; and

(2) In addition to the three dealer plates issued in accordance with paragraph (1) of this subsection, each dealer may also be issued one additional dealer plate for every 20 retail units sold in a calendar year.

In order to determine the additional number of plates to be issued to a dealer, a dealer shall be required to certify to the department the number of retail units sold in the prior calendar year using the past motor vehicle sales history of the dealer. If no sales history is available, the department shall issue a number of plates based on an estimated number of sales for the coming calendar year. The department may, in its discretion, increase or decrease the number of plates issued based on actual sales.

(c) Persons engaged in the business of transporting mobile homes and house trailers for others shall likewise be entitled to obtain license plates under this Code section. The commissioner is authorized to promulgate rules and regulations covering the issuance of plates to such persons; provided, however, this Code section shall not apply in any manner to farm tractors.

~~(c)~~(d) This Code section shall not apply in any manner to mopeds as such term is defined in Code Section 40-1-1.

~~(d)~~(e) The license plates issued pursuant to this Code section shall be revoked and confiscated upon a determination after a hearing that such dealer, distributor, manufacturer, or person engaged in transporting mobile homes and house trailers has unlawfully used such license plates in violation of this Code section.

1 (f) If a license plate issued pursuant to this Code section is lost or stolen, the dealer,
2 manufacturer, distributor, or other party to whom the license plate was issued must
3 immediately report the lost or stolen plate to local law enforcement agencies. If a
4 replacement license plate is sought, the dealer, manufacturer, distributor, or other party to
5 whom the license plate was issued shall file a notarized affidavit with the department
6 requesting a replacement plate. Such affidavit shall certify under penalty of perjury that the
7 license plate has been lost or stolen and that the loss has been reported to a local law
8 enforcement agency."

9 SECTION 3.

10 Said chapter is further amended by striking Code Section 40-2-39, relating to registration and
11 licensing of new motor vehicle dealers, and inserting in its place the following:

12 "40-2-39.

13 (a) As used in this Code section, the term:

14 (1) 'Dealer' means any person engaged in the business of selling or leasing or offering
15 to sell or lease new motor vehicles and who is licensed or otherwise authorized to utilize
16 trademarks or service marks associated with one or more makes of motor vehicles in
17 connection with such sales or leases. The term 'dealer' shall not mean any person engaged
18 solely in the business of selling used motor vehicles and shall not mean any person
19 engaged in the solicitation, advertising, or financing of the sale of new motor vehicles and
20 shall not mean any person engaged solely in activities as a manufacturer or distributor of
21 new motor vehicles.

22 (2) 'Distributor' means any person who, pursuant to a contract with a manufacturer, sells
23 or offers to sell new motor vehicles to new motor vehicle dealers.

24 (3) 'Established place of business' means a permanent salesroom or sales office of a new
25 motor vehicle dealer, which permanent salesroom or sales office is located in a permanent
26 building on an open lot and which is marked by an appropriate sign and at which a
27 permanent business of bartering, trading, or selling of new motor vehicles is carried on
28 in good faith.

29 (4) 'Manufacturer' means any person who makes or assembles new motor vehicles.

30 (5) 'Motor vehicle' means every self-propelled vehicle intended primarily for use and
31 operation on the public highways, except farm tractors and other machines and tools used
32 in the production, harvesting, and care of farm products and except construction
33 equipment.

34 (6) 'New motor vehicle' means a motor vehicle which has been sold to a dealer and on
35 which the original motor vehicle title has not been issued.

(7) 'Person' means every natural person, partnership, corporation, association, trust, estate, or any other legal entity.

(8) 'Temporary site' means a location at which new or used motor vehicles are sold or offered for sale for which a temporary site permit has been issued by the Department of Motor Vehicle Safety in accordance with paragraph (4) of subsection (b) of this Code Section and which location is:

(A) Used for a period not to exceed 96 hours in any ~~one-month~~ 30 day period of time;

(B) Used not more than three times in any calendar year; and

(C) Located in ~~the county which is within two counties of~~ the county in which the established place of business of the new motor vehicle dealer using the temporary site is located or an adjoining county.

(9) 'Trade shows' means the display or solicitation for sale of new motor vehicles at a location other than the established place of business at which the sales transaction is accomplished or at which delivery of the new motor vehicle is completed.

(b)(1) It shall be unlawful for any person to engage in any activity as a new motor vehicle dealer unless and until such person has registered with the commissioner and obtained a dealer's number license plate under Code Section 40-2-38 for each established place of business at which the person engages in such activity. The commissioner shall not accept such application for registration and shall not issue a dealer's number license plate unless and until the applicant establishes to the satisfaction of the commissioner, under criteria established by rules or regulations promulgated by the commissioner, that the applicant shall not engage in any activity of a new motor vehicle dealer except at an established place of business, or at a temporary site, or a properly licensed auto auction or licensed facility. This paragraph shall not be construed to prohibit a new motor vehicle dealer from delivering a vehicle off site if the transaction is initiated at an established place of business under this chapter.

(2) It shall be unlawful for any person to engage in any activity as a new motor vehicle dealer except at an established place of business which has been registered as such under this Code section and Code Section 40-2-38 or at a temporary site.

(3) This subsection shall not apply to new motor vehicle trade shows and shall not be construed to prohibit new motor vehicle trade shows or properly licensed auctions.

(4)(A) At least 60 days prior to the opening of a sale at a temporary site, a new motor vehicle dealer must make application to the Department of Motor Vehicle Safety for a temporary site permit.

(B) To be eligible for a temporary site permit, a new motor vehicle dealer must be registered with the department as required by Code Section 40-2-38. In order to obtain

1 a temporary site permit, a new motor vehicle dealer must provide, on a form
2 promulgated by the department.

3 (i) The address, including county, of the new motor vehicle dealer's established place
4 of business;

5 (ii) The address, including county, of the temporary site location;

6 (iii) The dates and hours of the temporary site sale;

7 (iv) The number of temporary site sales already conducted by the new motor vehicle
8 dealer during the calendar year in which the requested temporary site sale is to occur;
9 and

10 (v) The name, address, and contact person of any sponsors, promoters, and lending
11 institutions involved in or to be represented at the temporary site sale.

12 (C) As part of the application, a new motor vehicle dealer must submit written
13 documentation demonstrating that the new motor vehicle dealer has complied with any
14 licensing requirements applicable in the local jurisdiction in which the temporary site
15 sale will occur and a copy of a written agreement with the owner of the real property
16 where the sale is to occur.

17 (D) A temporary site permit issued pursuant to this paragraph shall be valid only for
18 the dates and hours of the sale as indicated in the application submitted to the
19 department and must be prominently displayed at the temporary site at all times during
20 the sale. No new motor vehicle dealer may purchase more than three temporary site
21 permits within a calendar year. A temporary site permit is not transferable to any other
22 dealer or location.

23 (E) The filing fee for each application for a temporary site permit shall be \$100.00.

24 (c) As an alternative to criminal or other civil enforcement, the commissioner, in order to
25 enforce this Code section or any orders, rules, and regulations promulgated pursuant
26 thereto, may issue an administrative fine not to exceed \$1,000.00 for each violation,
27 whenever the commissioner, after a hearing, determines that any person has violated any
28 provisions of this Code section or any regulations or orders promulgated thereunder. If,
29 after a hearing, the commissioner determines that any person has violated this Code section
30 more than once, the commissioner may suspend a dealer's registration for a period not to
31 exceed ten days. Any ~~The~~ hearing and any administrative review thereof held pursuant to
32 this Code section shall be conducted in accordance with the procedure for contested cases
33 under Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' Any person who
34 has exhausted all administrative remedies available and who is aggrieved or adversely
35 affected by a final order or action of the commissioner shall have the right of judicial
36 review thereof in accordance with Chapter 13 of Title 50. All fines recovered under this
37 subsection shall be paid into the state treasury. The commissioner may file, in the superior

1 court (1) wherein the person under order resides; (2) if such person is a corporation, in the
2 county wherein the corporation maintains its established place of business; or (3) in the
3 county wherein the violation occurred, a certified copy of a final order of the
4 commissioner, whether unappealed from or affirmed upon appeal, whereupon the court
5 shall render judgment in accordance therewith and notify the parties. Such judgment shall
6 have the same effect and proceedings in relation thereto shall thereafter be the same as
7 though the judgment had been rendered in an action duly heard and determined by the
8 court. The penalty prescribed in this Code section shall be concurrent, alternative, and
9 cumulative with any and all other civil, criminal, or alternative rights, remedies, forfeitures,
10 or penalties provided, allowed, or available to the commissioner with respect to any
11 violation of this Code section or any order, rules, or regulations promulgated pursuant
12 thereto. For purposes of this subsection, the sale of each motor vehicle while not in
13 compliance with temporary site permit requirements shall constitute a separate violation.
14 (d) Any person who violates any provision of this Code section shall be guilty of a
15 misdemeanor and, upon conviction thereof, shall be subject to a fine not to exceed
16 \$1,000.00 or imprisonment for a period not to exceed 12 months, or both."

17 SECTION 4.

18 Said chapter is further amended by striking Code Section 40-2-153, relating to registration
19 and licensing of makers and dealers of motor vehicles, and inserting in lieu thereof the
20 following:

21 "40-2-153.

22 ~~(a) Manufacturers and dealers engaged in the manufacture or sale of motor vehicles,~~
23 ~~tractors, or trailers shall register with the commissioner and shall apply for a distinguishing~~
24 ~~dealer's number. The application shall specify the name and make of motor vehicle, tractor,~~
25 ~~or trailer manufactured or sold by the applicant and shall be made upon forms prepared by~~
26 ~~the commissioner. The applicant shall pay at the time of making application a fee of~~
27 ~~\$62.00. For the fee, the commissioner shall furnish the applicant one number plate to expire~~
28 ~~December 31 of odd-numbered years, to be known as a dealer's number and to be~~
29 ~~distinguished from the number plates provided in this Code section by a different and~~
30 ~~distinguishing color to be determined by the commissioner. The dealer's number plate shall~~
31 ~~have the word 'Dealer' on its face and shall be used for the purpose of demonstrating or~~
32 ~~transporting a manufacturer's or dealer's vehicles or trailers for sale. No dealer or~~
33 ~~manufacturer may use or permit to be used a dealer's number for private use or on cars for~~
34 ~~hire or for lease or in any other manner not provided in this Code section.~~

~~(b) In the event a dealer or manufacturer desires more than one number plate, he shall so state on the application and, in addition to the fee of \$62.00, shall pay a fee of \$12.00 for each additional number plate furnished.~~

~~(c) Each person engaged in the business of transporting motor vehicles for others under the motor vehicle's own power shall be entitled to obtain license plates under this Code section, but the plates shall be used only on vehicles being transported.~~

~~(d) Each person engaged in the business of transporting mobile homes and house trailers for others shall be entitled to obtain license plates under this Code section.~~

~~(e) This Code section shall not apply in any manner to farm tractors Reserved.~~

SECTION 5.

Chapter 47 of Title 43 of the Official Code of Georgia Annotated, relating to used motor vehicle and used motor vehicle parts dealers, is amended by striking paragraph (15.1) of Code Section 43-47-2, relating to definitions regarding used motor vehicle and used motor vehicle parts dealers, and inserting in its place the following:

"(15.1) 'Temporary site' means a location at which used motor vehicles are sold or offered for sale; for which a temporary site permit has been issued by the board in accordance with Code Section 43-47-8.2 and which location is:

(A) Used for a period not to exceed 96 hours in any ~~one-month~~ 30 day period of time; and

(B) Located in ~~the county which is within two counties of~~ the county in which the established place of business of the used motor vehicle dealer using the temporary site is located or an adjoining county; and

(C) Used not more than three times in any calendar year."

SECTION 6.

Said chapter is further amended by striking Code Section 43-47-8.2, relating to places of business and temporary sites, and inserting in its place the following:

"43-47-8.2.

(a) A used motor vehicle dealer shall not engage in any activity as a used motor vehicle dealer except at such dealer's established place of business which has been registered under Code Section 40-2-38, or at a temporary sites not more than three times in any one calendar year, or at a licensed auto auction or any licensed facility. This subsection shall not be construed to prohibit a used motor vehicle dealer from delivering a vehicle off site provided the transaction is initiated from an established place of business under this chapter.

1 (b)(1) At least 60 days prior to opening a sale at a temporary site, a used motor vehicle
2 dealer must make application to the board for a temporary site permit. A separate
3 application must be submitted for every temporary site sale.

4 (2) To be eligible for a temporary site permit, a used motor vehicle dealer must be
5 registered with the Department of Motor Vehicle Safety as required by Code Section
6 40-2-38. In order to obtain a temporary site permit, a used motor vehicle dealer must
7 provide, on a form promulgated by the board,

8 (A) The address, including county, of the used motor vehicle dealer's established place
9 of business;

10 (B) The address, including county, of the proposed temporary site location;

11 (C) The dates and hours of the temporary site sale;

12 (D) The number of temporary site sales already conducted by the used motor vehicle
13 dealer during the calendar year in which the requested temporary site sale is to occur;
14 and

15 (E) The name, address, and contact person of any sponsors, promoters, and lending
16 institutions involved in or to be represented at the temporary site sale.

17 (3) As part of the application, a used motor vehicle dealer must submit written
18 documentation demonstrating that the used motor vehicle dealer has complied with any
19 licensing requirements applicable in the local jurisdiction in which the temporary site sale
20 will occur and a copy of a written agreement with the owner of the real property where
21 this sale will occur.

22 (4) A temporary site permit issued pursuant to this subsection shall be valid only for the
23 dates and hours of the sale as indicated on the application submitted to the board and
24 must be prominently displayed at the temporary site at all times during the site sale. No
25 used motor vehicle dealer may purchase more than three temporary site permits within
26 a calendar year. A temporary site permit is not transferable to any other dealer or location.

27 (5) The fee for each application for a temporary site permit shall be \$100.00.

28 (c) As an alternative to criminal or other civil enforcement of this Code section or any
29 orders, rules, and regulations promulgated pursuant hereto, the board may issue an
30 administrative fine not to exceed \$1,000.00 for each violation whenever the board, after a
31 hearing, determines that any person has violated any provisions of this Code section or any
32 orders, rules, and regulations promulgated pursuant hereto. If, after a hearing, the board
33 determines that any person has violated this provision more than once, the board may
34 suspend his or her license for a period not to exceed ten days. Any hearing and any
35 administrative review held pursuant to this Code section shall be conducted in accordance
36 with the procedure for contested cases under Chapter 13 of Title 50, the 'Georgia
37 Administrative Procedure Act.' Any person who has exhausted all administrative remedies

1 available and who is aggrieved or adversely affected by a final order or action of the board
2 shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50.
3 All fines recovered under this Code section shall be paid into the state treasury. The board
4 may file, in the superior court:

5 (1) In the county wherein the person under order resides;

6 (2) If such person is a corporation, in the county wherein the corporation maintains its
7 established place of business; or

8 (3) In the county wherein the violation occurred,

9 a certified copy of a final order of the board, whether unappealed from or affirmed upon
10 appeal, whereupon the superior court shall render judgment in accordance therewith and
11 notify the parties. Such judgment shall have the same effect and proceedings in relation
12 thereto shall thereafter be the same as though the judgment had been rendered in an action
13 duly heard and determined by the superior court. The penalty prescribed in this Code
14 section shall be concurrent, alternative, and cumulative with any and all other civil,
15 criminal, or alternative rights, remedies, forfeitures, or penalties provided, allowed, or
16 available to the board with respect to any violation of this Code section or any order, rule,
17 or regulation promulgated pursuant hereto. For purposes of this Code section, the sale of
18 each motor vehicle while not in compliance with temporary site permit requirements shall
19 constitute a separate violation.

20 (d) Any person who violates any provision of this Code section shall be guilty of a
21 misdemeanor and, upon conviction thereof, shall be subject to a fine not to exceed
22 \$1,000.00 or imprisonment for a period not to exceed 12 months, or both."

23 **SECTION 7.**

24 This Act shall become effective on July 1, 2005, except Section 2, which shall become
25 effective on January 1, 2006.

26 **SECTION 8.**

27 All laws and parts of laws in conflict with this Act are repealed.